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Editorial: Clerks must follow the law

Near the end of Wednesday's historic decision to overturn Indiana's ban on same-sex marriage, U.S. District Judge Richard Young gave specific instructions to several individuals and organizations by name. Young spoke first to the state's county clerks. He said they were prohibited "from denying a marriage license to a couple because both applicants for the license are the same sex."

He then addressed Indiana Attorney General Greg Zoeller, making it clear there should be no prosecution of such couples who fill out marriage license applications, clerks who grant them documentation or "those who choose to solemnize same-sex marriages."

Zoeller was named as a defendant in the case and argued in court on behalf of the state. In an opinion column for the Kokomo Tribune April 1, Zoeller explained he was simply executing his sworn duties.

"The correct course of action is for the attorney general to provide a good-faith defense ... until and unless the U.S. Supreme Court decides to the contrary," he wrote.

One reason we're still waiting on that theoretical SCOTUS case is because of what happened in California in the aftermath of Proposition 8, the ballot initiative that constitutionally outlawed same-sex marriage. As the case that eventually led to Prop. 8's defeat, Hollingsworth v. Perry, made its way through the court system, then-Attorney General and current Gov. Jerry Brown refused to defend it in court.

"When the [Supreme Court] heard the Prop. 8 case last year, it ruled that because the law was not defended by the state of California, the law's private defenders lacked legal standing, and there could be no conclusive ruling on Prop. 8's constitutionality," Zoeller wrote. "That left the question of state-level marriage definitions muddled and left our nation in suspense."

Zoeller Wednesday announced plans to appeal Young's decision, a move Indiana Gov. Mike Pence supports. Several counties, including Cass, Miami and Tipton, wouldn't issue same-sex couples marriage licenses Wednesday. Others, like Howard and Hamilton, did. The Supreme Court eventually will decide this, but in the meantime, county clerks should take a page from Zoeller and play their parts by issuing these licenses.

"This is not personal advocacy on my part or by the lawyers who work in my office," Zoeller wrote. You don't have to agree with the law, you just have to follow it.